

**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200600261

Issuance Date:

August 30, 2006

Stream: Left Fork and Peelpoplar Branch
of Blackberry Creek

Closing Date:

September 28, 2006

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the Commonwealth of Kentucky's Division of Water to act on Section 401 Water Quality Certification for the following application.

APPLICANT: ICG East Kentucky, LLC
1021 Tori Drive
Hazard, Kentucky 41701

LOCATION: The proposed project is located in streams that are tributaries to Big Creek and the Tug Fork River, which is a navigable water of the United States. The project is located in the following Big Creek Watershed tributaries include: Right Fork Lick Branch, Unnamed Tributaries of Right Fork Lick Branch, Unnamed Tributaries of Big Creek, Goff Branch and Unnamed Tributaries of Goff Branch. Big Creek is a tributary to the Tug Fork River. The project is also located in the following Tug Fork River tributaries: Left Fork Mt. Sterling Branch, Unnamed Tributaries of the Left Fork Mt. Sterling Branch, Right Fork Mt. Sterling Branch and Unnamed Tributaries of the Right Fork Mt. Sterling Branch. The project is near the town of Nolan, in Pike and Martin Counties, Kentucky (latitude 37° 46' 05" and longitude 82° 20' 42") as depicted on the attached *Site Location Map*.

DESCRIPTION OF THE PROPOSED WORK: The applicant obtained a state Surface Mining Control and Reclamation Act permit (*880-0179*), dated February 28, 2006, from the Kentucky Department for Natural Resources' Division of Mine Reclamation and Enforcement (KDMP) to perform contour, area and mountaintop removal mining activities. The proposed project would affect a total of 1,243.17 acres of surface disturbances. The applicant indicates the construction of nine permanent hollow fills and four associated sediment pond embankments are necessary in order to store excess spoil material generated from the proposed surface mining operation. The operational life of the project is expected to be four (4) years.

The Eastern Kentucky Stream Assessment Protocol (EKSAP) has been utilized to assess the proposed stream impacts and compensatory mitigation. The EKSAP computes proposed aquatic resource impact and mitigation activities in the form of Ecological Integrity Units (EIU). The hollow fill construction would involve the permanent placement of dredged or fill material into 32,898 linear feet (or 3.75 acres / 17,138 EIU) of jurisdictional waters of the United States. The placement of dredged or fill material associated with construction of the sediment pond embankments would impact 911 linear feet (or 0.15-acre / 459 EIU) of jurisdictional waters of the United States. The sediment structures would be located, between the toe of the hollow fills and the sediment pond embankments, in 3,653 linear feet (or 0.65-acre / 11,590 EIU) of jurisdictional waters of the United States. The total impacts resulting from the proposed project equate to 37,462 linear feet (or 4.55 acres / 29,187 EIU).

The information submitted indicates the proposed watersheds to be impacted by hollow fill construction have been previously disturbed by underground and surface mining, residential and commercial oil and natural gas exploration, and logging. The Tug Fork is a state listed 303d stream due to metal and/or pH impairments.

ALTERNATIVE ANALYSIS: Coal mining is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

MITIGATION PLAN: The application includes a conceptual compensatory mitigation plan (CMP) to compensate for the proposed unavoidable permanent and temporary impacts to waters

of the U.S. regulated by the Department of the Army, Corps of Engineers. The applicant proposes to perform on-site and off-site (Big Branch) compensatory mitigation in the form of stream restoration, enhancement, creation and/or payment into the Kentucky In-Lieu Fee Program to offset the unavoidable impacts to waters of the United States. The stream channels impacted from the sediment corridor and sediment pond would be restored upon final bond release from the KDMP. A riparian corridor extending 50 feet from each stream bank would be established. The applicant has indicated the off-site compensatory mitigation on Big Branch may be protected in perpetuity. The proposed compensatory mitigation would result in a functional lift of 9,772 EIU.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the Commonwealth of Kentucky's Division of Water.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This public notice serves as coordination with the Kentucky Heritage Council's State Historic Preservation Office for their review regarding historic properties. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. The proposed project lies within the distribution range of the endangered Indiana bat (*Myotis sodalis*). This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

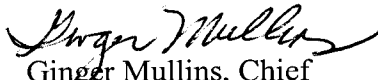
The Huntington District has consulted the most recently available information and has determined that the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which has been determined to be critical.

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the

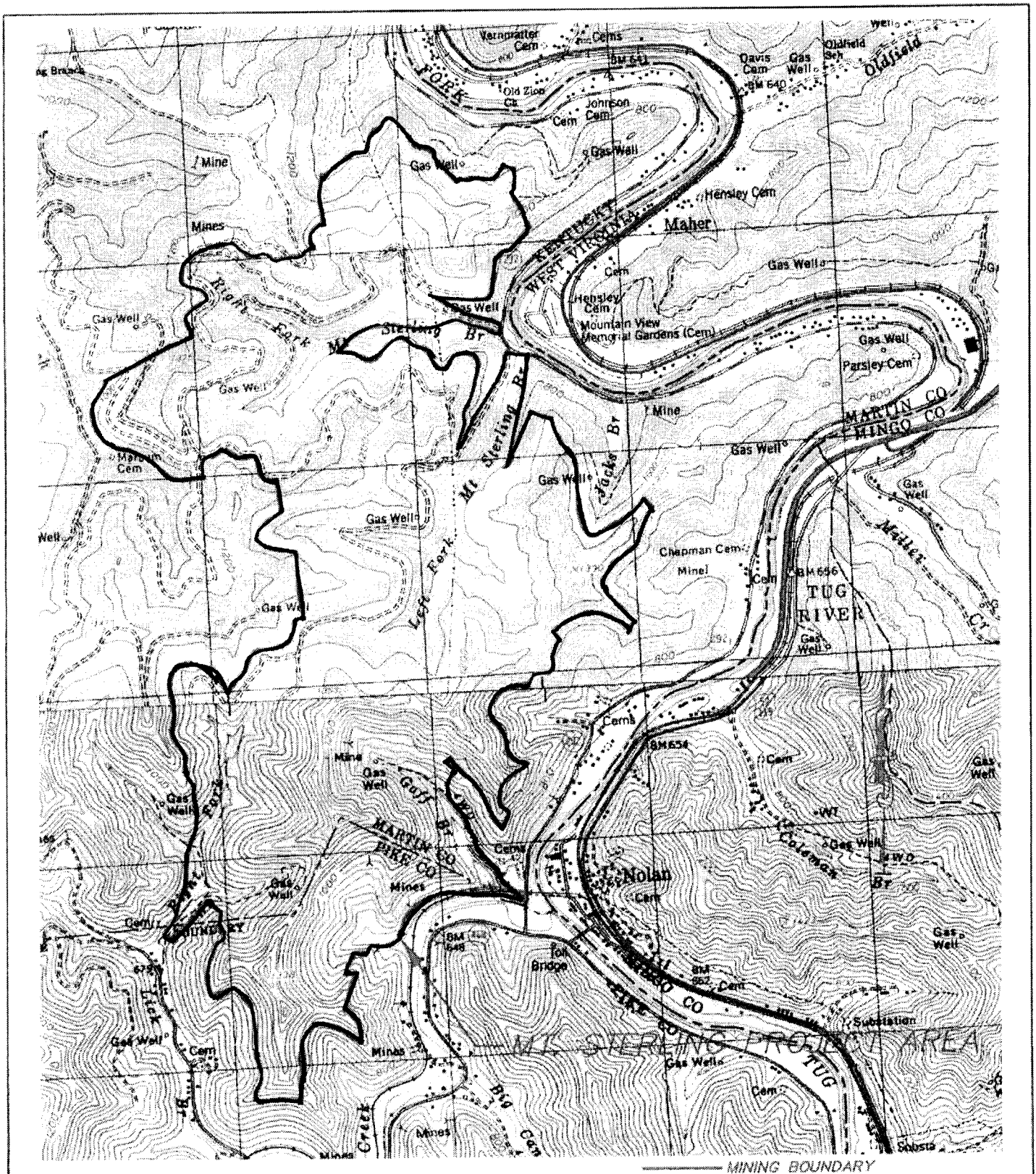
public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Michael Hatten, Regulatory Specialist, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Mr. Michael Hatten of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(K)



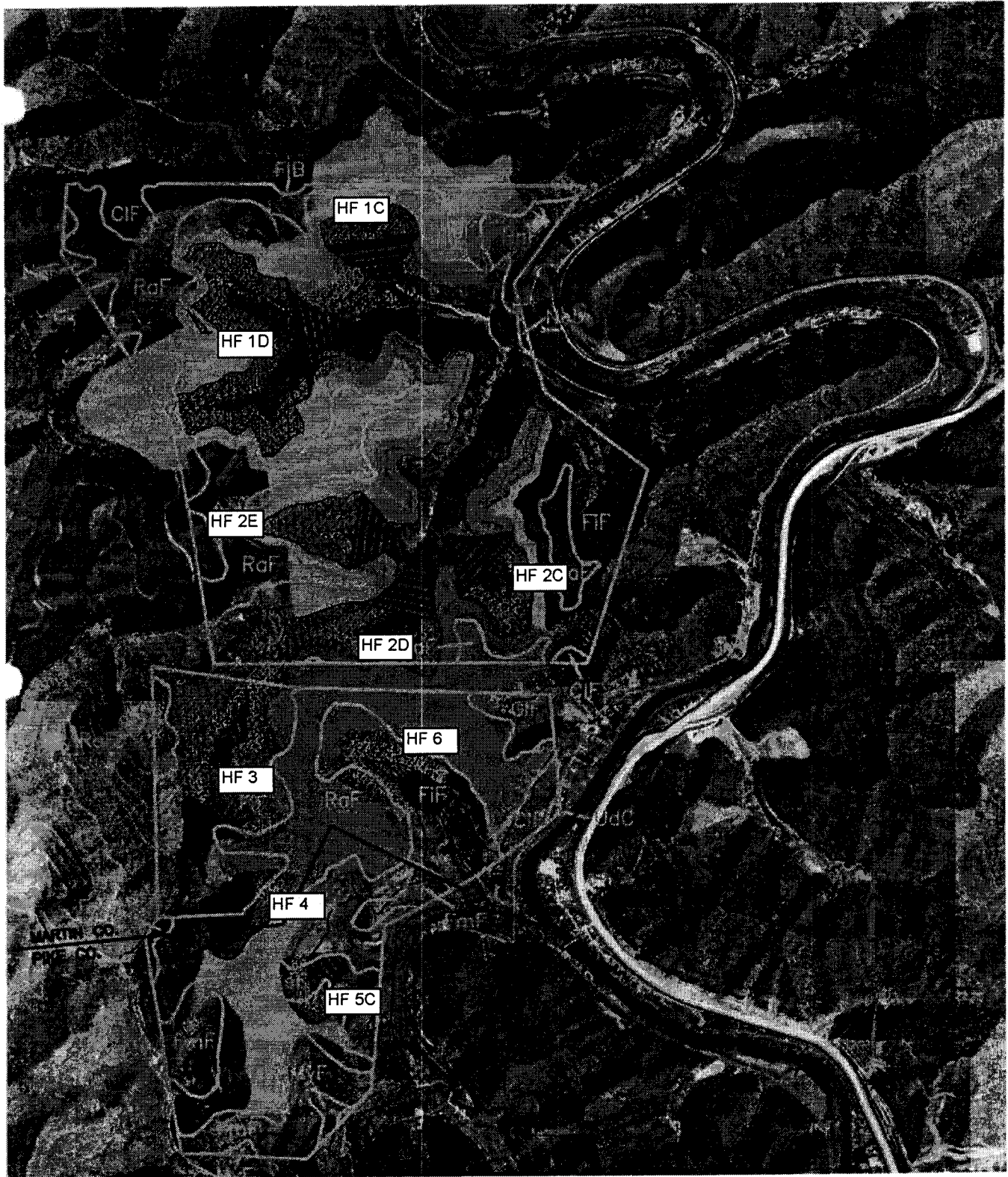
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MT. STERLING PROJECT TOPOGRAPHIC MAP

SITE LOCATION MAP

200600261-Left Fork and Peelpoplar Branch of
Blackberry Creek
ICG East Kentucky, LLC
SMCRA Permit No. 880-0179
Drawing No. 1 of 4



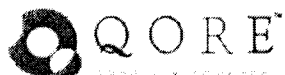
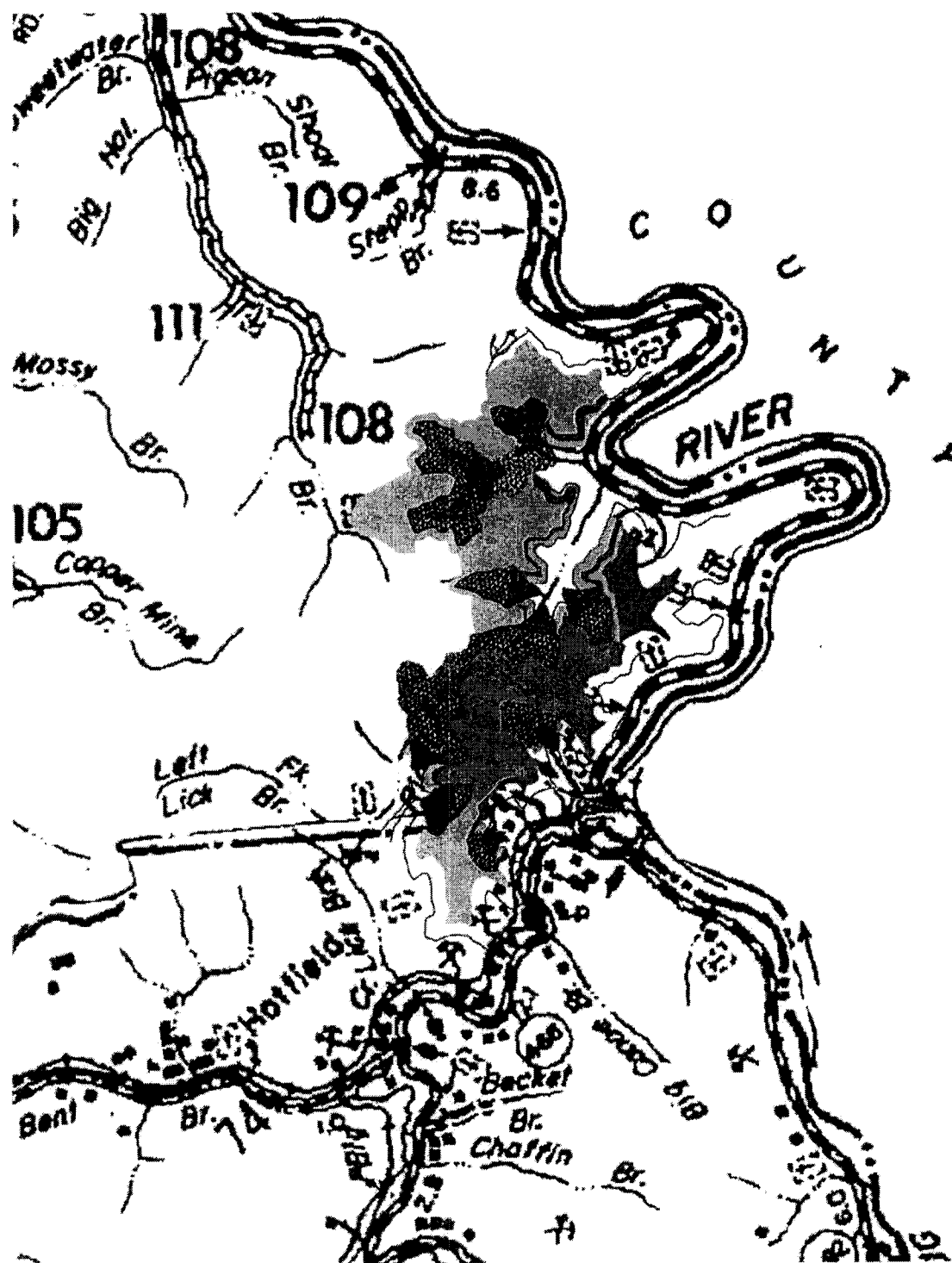
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MT. STERLING PROJECT AERIAL MAP

MINING LOCATION WITH SOILS MAP

200600261-Left Fork and Peelpoplar Branch of
 Blackberry Creek
 ICG East Kentucky, LLC
 SMCRA Permit No. 880-0179
 Drawing No. 2 of 4



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MT. STERLING

SITE LOCATION MAP

ON COUNTY ROAD MAP

200600261-Left Fork and Peoplar Branch of
Blackberry Creek
ICG East Kentucky, LLC
SMCRA Permit No. 880-0179
Drawing No. 3 of 4

